

## Tension Points Matrix of Primary Owner and Contextual Phase

	USG			CONTRACTOR	
<b>Evaluation/Acquisition Phase</b>	Data rights as an evaluation factor	What is necessary to comply with 2320(e)(3) req't to address TD (and CS) needs in view of potential changes in sustainment strategy?	Poor DID alignment with FFF and OMIT versus rights in FFF and OMIT	Data rights as an evaluation factor	
	Modular open systems approaches (MOSA)	Small Business Innovation Research (SBIR) - flowdown to suppliers; inability to share with primes; how evaluated	Conflicts between 10 USC 2320 and other markings (Distribution Statements); clauses (252.204-7000); and contract	Modular open systems approaches (MOSA)	Bid protest versus need to evaluate legality/business case for IP terms in proposals and sole source justifications (prime and supplier levels)
	Legacy programs vs. new-starts	Are existing rights sufficient for depot, or is there a need for depot specific; service specific; program specific licenses		Software vs. technical data	Commercial software terms versus Government unique requirements
	Software vs. technical data separation	Treatment of IRAD/indirect cost pools versus SFRAD for IP rights determinations		Commercial items vs. noncommercial	Complexity of IP scheme versus ability of commercial and small businesses to staff to comply
	Authorized release & use of Lim. Rights TD (two different points)	Difference in business plans between government and industry		Mandatory flow down (commercial subs & suppliers)	Embedded software (the object code item) versus source code and software design documentation (the data used to produce the object code)
	Mixed Funding: restore pre-12 language	access for limited purposes (cyber review; air worthiness; approvals; NDAs) versus delivery as CDRL under DFARS		Mixed Funding: restore pre-12 language	
	Deferred Ordering Period: 6 yrs (rather than perpetual)	Need for Government flexibility to use existing tools versus need for legal review of H clause and evaluation criterion (versus 10 USC 2320; versus CICA)		GPR in MSI even if DEPE and MSI developed w/ mixed funding	
	Deferred Ordering Data Part 1: only data "generated" under the K	IRAD risk correct for Limited/Restricted Rights		Difference in business plans between government and industry	
	Deferred Ordering Part 2: all interface or major systems interface data may be ordered regardless of USG development funding	Failure to define and order CDRLs/reliance on deferred ordering and DAL to obtain data		access for limited purposes (cyber review; air worthiness; approvals) versus delivery as CDRL under DFARS	
	GPR in MSI even if DEPE and MSI developed w/ mixed funding	Rigid IP requirements versus need for flexible arrangements		Rigid IP requirements versus need for flexible arrangements	
	Segregation "at the clause level"—Applying Noncommercial clauses to commercial TD/CS	Lack of trained personnel versus needs for IP Strategy; draft SNLs; DFARS 227.7103-1; IP valuation		Data assertion list (7017) - burden on contractor to prepare/government to receive versus benefit to Government; confusion over lists lead to contract delays	
	Time limits on [priced] contract options – generally 5 yrs, extendable to 10?	Balance need for rights in IP versus need for competition		IP Valuation versus evaluatino factors and priced CLINs	
	Depot Level Maintenance capability / req'ts			Loss of (sustainment) support	
	Software maintenance/sustainment requirements			Mandatory flow down (commercial subs & suppliers)	
<b>Sustainment Phase</b>	How to keep CDRLs up to date			How to keep CDRLs up to date	
	Deferred Delivery versus Escrow			Deferred Delivery versus Escrow	
	10 USC 2321 protections versus complexity too high to get meaningful caselaw			10 USC 2321 protections versus complexity too high to get meaningful caselaw	
				Complexity of IP scheme versus ability of commercial and small businesses to staff to comply	
				Open interfaces versus preferences for industry standards; standards maintenance	
				Embedded software (the object code item) versus source code and software design documentation (the data used to produce the object code)	
<b>STRATEGIC QUESTIONS (not clear ownership / common ground realities)</b>	Funding test for rights: Proven effectiveness at the extremes and has it's practical merits but, other tests should be considered , to compliment.				
	Government as a customer, versus Government as a competitor (Depot; Labs), Government mandating contractors 'create' new competitors				
	For profit model (Contractor) versus non profit business model (Government) will always conflict to some extent				
	CDRL requirements for fundamental research programs versus CDRL needs for production/sustainment/existing technology seem like two separate work streams. (813 Panel focused more on latter)				
	Longer term commercial return on investment metrics over years, versus immediate depot and competition requirements will always conflict to some extent.				
	Balance need for rights in IP and maintain industry R&D interest, versus Gov't need for competition.				